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REAL ESTATE

Deal Killers

By Andrew M. Lieb and Michael Axelrod

You are sitting in your office with your head in legal research while working on an affirmation due the first thing in the morning. Without warning, it comes through your fax machine unannounced to proclaim that you have a new sales transaction that must be done yesterday. The terms are convoluted, but the expectations are great. You haven't yet been retained by the clients, but the real estate agent who faxed the document expects the contract out before you blink. Wouldn't it be great if this document answered the essential deal terms that were already negotiated so that your contract is consistent? Forget that. What about attaching a deed so you can verify that your new client actually owns the place that they want to sell? No chance. How about just the mortgage contingency terms being more concrete than stating 80 percent financing? Nope. Wouldn't it be great if you were put on notice to expect the document in the first place? Don't ask for that. Yet the purpose of this article is to at least create a uniform name and title so our staffs know what they are reading and how to respond. And they call us the deal killers.

The Long Island Education Board™ (LIEB), a division of Lieb at Law, P.C., has sought to change all of this. LIEB operates a New York State licensed real estate school and decided to survey local agents on the different terms that they use for this document to find the most utilized term and to standardize the industry. Results were obtained through administering an instrument to 99 real estate agents at a continuing education course in Long Island. The study finds that the industry lacks standardization concerning the identification of this document, but nonetheless, the term "Sales Agreement" is used most prevalently. It is theorized that many deals fail as a result of great disparities in the practice of professionals in this industry.

Methodology

During the August 4, 2011 course, "Discovering the Home Inspection," 99 licensed real estate agents were surveyed with 85 responding with a completed survey. The survey instrument was created as a result of in-person qualitative elicitation interviews at varying brokerage offices. The instrument utilized the following inquiry, among others:

What is the name of the document provided to the attorney prior to their drafting the contract of sale? (Circle the term most actively referred to in your office/practice)

a. Binder; b. Sales Agreement; c. Deal Sheet; d. Purchase Agreement; e. Agreement of Sale; f. Memorandum of Sale; g. Purchase Contract; h. Other.

Results

Although 80 percent of the agents surveyed refer to the document by one name only, the term by which they refer to it varies significantly. "Sales Agreement," "Binder" and "Deal Sheet" were the most commonly utilized terms with 41 percent, 28 percent, and 6 percent of real estate agents responding that they utilize each term respectively.

Therefore, of the real estate agents responding to the survey, only 32.8 percent refer to the document by only the



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term "Sales Agreement" with the remaining terms being utilized at even lower percentages. Of the 20 percent of agents who reported utilizing multiple terms to refer to the same document, 82 percent utilize two or three terms, while the remaining 18 percent utilize four or more terms to consistently refer to the same document. With respect to those real estate agents who work in managerial roles at their real estate brokerage companies, 75 percent refer to the document by a single term. Lastly, only two real estate agents selected "Other" in response to the question, with one agent utilizing the term "Commission Bill" and the other utilizing the term "Commission Agreement."

In an industry where compliance is essential for profitability and retention of licensing, it was expected that uniformity and consistency would be more ever-present. However, there is inconsistency in even identifying the most basic and essential document utilized by real estate agents to play their part in consummating a deal. While agents seem to have a general understanding of the possible different terms for this document, it is theorized that the lack of standardization has had a significantly detrimental impact on the transaction process as a whole and has resulted in dead deals. Additionally, it is believed that the lack of standardization creates false expectations between real estate agents and attorneys because it creates miscommunications of key deal terms and expected turnaround time. It is further postulated that a secondary effect of these miscommunications has created friction between attorneys and real estate agents. It is suggested that all real estate agents utilize the term "Sales Agreement" to identify the subject document in future because it is currently the most consistently utilized term.

Limitations

The survey instrument was not thoroughly tested for reliability and validity prior to its administration. The instrument was only administered one time, with one determinative question, without any alternative measurement of different aspects of the document's identity. Therefore, the reliability of the results is limited concerning test-retest reliability, alternative-form reliability, and internal consistency reliability. Yet, the instrument did achieve face validity and content validity in that it was approved by both lay individuals and real estate agents for understanding prior to its administration. Nonetheless, there was no measurement of criterion validity available because no other like instrument exists to be utilized for comparison between this instrument and the "gold standard" to effect such measurements. As a result of the survey's limitations with respect to reliability, its construct

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validity is also limited in that alternative methods for obtaining the same information were not administered thereby preventing a determination of degree of convergence between instruments. As a result of the limitations to this instrument, divergences may exist between the sample answering the instrument and the actual target population of real estate agents. The divergence may also result because the sample consists of real estate agents who take continual education credits in-person, where online credit recipient's actions may not be accurately represented by the sample who participated in the survey.

Recommendations

Further research is needed to both understand the extent of the inconsistencies that exist in the real estate industry and to combat the same through properly planned interventions. Further research should ascertain correlations between more specific demographic aspects of real estate agents and the terminology

utilized. Should you wish to impact these future studies by suggesting questions you have, please email research@liebatalaw.com.

Note: Andrew M. Lieb is the Managing Attorney at Lieb at Law, P.C., a family-owned law firm with offices in Center Moriches and Manhasset, New York. Mr. Lieb is also the founder and lead instructor of the firm's New York State licensed Real Estate School, which serves as the Pro Bono arm of Lieb at Law offering continuing education courses to Real Estate Agents and Brokers. He is the Co-Chair of the SCBA Real Property Committee

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